IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER NO.812 OF 2005
WITH
CIVIL APPLICATION NO.393 OF 2005

Municipal Corporation for Greater Mumbai. ...Appellant.
Vs.
Rais Abdul Aziz Qureshi. ...Respondent.
....
Mrs.Geeta Joglekar for the Appellant.
.....

CORAM : DR. D.Y. CHANDRACHUD, J.

December 5, 2005.

P.C.:

This appeal is directed against an order dated 24th November 2004, passed by the City Civil Court making the motion taken out by the Respondent absolute in terms of prayer clause (a) and restraining the Municipal Corporation from acting upon the notice dated 4th March 2004 issued under Section 351 of the Mumbai Municipal Corporation Act, 1888 and an order dated 30th April 2004 passed by the Assistant Municipal Commissioner holding that the Respondents have carried out an unauthorised construction which is liable to be removed.

2. In the area known as Saboo Siddiqui Road, Musafirkhana, Mumbai-400 001, there are several Municipal Chawls. According to the Municipal Corporation the site in question was inspected by the officers of the Corporation who found a construction of a structure admeasuring Ground and three upper floors with brick masonry wall, ladi coba slab, steel girders and A.C. Sheets roof between Municipal Building Nos.4 and 5. A notice to show cause was issued to the Respondent on 11th March 2004 calling upon him to show cause as to why action be not taken under Section 351. The Respondent submitted a reply on 15th March 2004 contending that the structure was in existence since 1966; that it has been repaired with the prior permission of the Municipal Corporation and that the father of the Respondent was a tenant of the Municipal Corporation. The Assistant Municipal Commissioner passed an order on 30th April 2004 after considering the reply which was submitted by the Respondent. After going through the documents which had been filed by the Respondent, the Assistant Municipal Commissioner noted that the area in respect of which a vacant land tenancy was held by the Respondent was only 12.30 sq.mtrs. Moreover, it was held that

the structure which had been constructed was without the permission of the Municipal Corporation and was unauthorised. The Respondent had relied upon a repair permission purported to have been issued by the Ward Officer of A-Ward. However, it was stated in the order of the Assistant Municipal Commissioner that there was no corresponding office record available in his office. The area of the tenancy as per the record of the Estate Department was only 12.30 sq.mtrs. The Respondent had also relied upon an alleged repair permission dated 2nd January 1990. With reference to the aforesaid repair permission, it was noted that even the said permission was for a structure comprising of a ground floor and two upper floors, whereas the structure in existence consisted of a ground and three upper floors which does not conform to the sanction or with the area of the Vacant Land Tenancy. An order of demolition was accordingly passed.

3. The Respondent instituted a suit before the City Civil Court and took out a motion for interim relief. The Learned Trial Judge by his order dated 24th November 2004 noted that the Respondent had not produced any sanctioned plan for the structure nor the assessment record. Thus, the Learned Trial

Judge was of the view that no document was produced by the Respondent showing the land alloted as 34 sq.mtrs. as contended by the Respondent. The rent register was produced on behalf of the Municipal Corporation before the Trial Court which specifically showed that the area which was allotted to the original tenant was 12.30 sq.mtrs. However, the Respondent produced a photo copy of some alleged register which contained neither the date or year. However, relying on the aforesaid photo copy which was produced by the Respondent, the Learned Trial Judge held that it could not be neglected by the Court. Accordingly an order of injunction came to be granted.

4. Notice was issued in the Appeal from Order on 19th September 2005. On 17th October 2005 the Respondent appeared before the Court through Counsel. An order was accordingly passed directing the Municipal Corporation to submit a report. On 28th November 2005, the Court was informed that the report has been placed on the record by the Municipal Corporation. The Counsel for the Respondent has chosen to remain absent at the hearing on subsequent dates.

5. The case of the Respondent is that his father was a vacant land tenant of the Municipal Corporation since 1956 and that he had constructed a structure admeasuring 30' x 12' consisting of a ground floor and two upper floors and an attic floor comprising of brick masonry wall with A.C. Sheets roof in 1961-62. The Respondent sought to rely upon a repair permission dated 2nd January 1990 by which the Ward Officer, A-Ward purported to grant to the Respondent's father repair permission subject to the following amongst other conditions :

> "The size and shape of the existing structure viz., 30' x 12' x 28' height ground floor and 2 upper floor including attic floor with projecting gallery of 4' width on East & West side at upper level, shall be maintained."

The Municipal Corporation has in its affidavit before the City Civil Court specifically stated that the record of the Estate Department shows that the extent of the vacant land tenancy was 12.30 sq.mtrs. and not 34 sq. mtrs. Hence, the existing structure on site consisting of a ground and three upper floors was not only on an area not falling within the Vacant Land Tenancy but had utilised a massive FSI without authorisation or permission. Now, the documents which are produced on behalf of the Respondent do not

show any authorisation of his structure. During the pendency of this appeal, as noted earlier, the Municipal Corporation was directed to submit a report and accordingly an affidavit has been filed on 28th November 2005. It has been reiterated again that the authenticity of the repair permission dated 2nd January 1990 is doubtful since there is no corresponding office record. However, even if the repair permission that is relied upon by the Respondent is accepted, there is still a variation between the alleged repair permission dated 2nd January 1990 (Exh.C) and the structure as it stands today. It has been stated that the alleged repair permission itself mentioned that the structure is 30 feet in length, 12 feet width and 28 feet height with a ground and two upper floors including attic floor. However, the present structure consists of a ground and three upper floors, and the attic floor is sought to be converted into a regular third floor. The length of the structure is increased by 9 feet. The Municipal Corporation has also produced on record the register maintained in the normal course of business for vacant land occupiers. Copies of the Register for 1986-87, 1987-88, 1989-90 and 1992-93 show that the extent of the vacant land area in the occupation of the father of the Respondent was 12.30 sq.mtrs. The Municipal Corporation also filed on the record a

photo copy of the original plan maintained by the Estate and Land Management Department dated 30th July 1954 which shows that the passage between Plot Nos.10 and 11 was vacant and that there was no construction thereon. The Learned Trial Judge took due note of the record which was produced by the Municipal Corporation from its custody. These records have been maintained in the normal course of business and these records were not disputed. On the other hand the Learned Trial Judge noted in para 11 that the Respondent produced a photo copy of an alleged register which contains no reference of any date or year thereon. There has been an obvious error in granting relief to the Respondent on the basis of such a document which is unauthenticated, without date or year. In these circumstances, it cannot be said that a prima face case has been made out for the grant of interim relief. The Municipal Corporation has demonstrated that even if the repair permission as relied upon is to be regarded as an authentic document, the structure in existence at present does not conform to the dimensions set out therein and has been substantially altered in area, size, height and dimensions. The structure is unauthorised.

6. Having regard to the facts and circumstances of the case, this appeal has to be allowed and is accordingly allowed. The impugned order of the Trial Court dated 24th November 2004 is quashed and set aside. The Motion before the Learned Trial Judge shall accordingly stand dismissed.

7. In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

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